

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Ashland Electric Products, Inc.

v.

Case No. 04-cv-291-PB

Bombardier Transportation USA, Inc.

ORDER

Re: Document No. 16, Motion for Summary Judgment

**Ruling:** The motion is denied without prejudice. If defendant believes that it is entitled to summary judgement based on a forum selection clause, it shall file a renewed motion for summary judgement raising only this contention on or before November 4, 2005. The motion shall be accompanied by a memorandum of law and affidavits and exhibits of evidentiary quality demonstrating that the forum selection clause was a part of the contract on which plaintiff's claims are based. Defendant shall respond with a memorandum of law and affidavits and exhibits of evidentiary quality. Any such motion shall be filed without prejudice to defendant's right to later seek summary judgement on other grounds within 30 days of a ruling on the motion raising the forum selection clause issue. If defendant decides not to challenge the complaint based on the forum selection clause because it concludes that facts material to the resolution of the issue remain in dispute, it shall instead file, on or before November 4, 2005, a motion raising any other grounds for summary judgement with respect to the amended complaint. All other pending and ripe motions are denied.

/s/ Paul Barbadoro  
Paul Barbadoro  
District Judge

Date: October 4, 2005

cc: Paul Pike, Esq.  
Donald Smith, Esq.  
Steven Grill, Esq.  
George Campbell, Esq.  
Robert Stein, Esq.